



Better Cities - A Better Life

League of California Cities
www.cacities.org

May 20, 2002

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Boxer:

On behalf of California's 477 cities, I am writing to express our concerns about the potential impact on local governments of the investor-state provisions in H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2002. The League of California Cities (League) is concerned that this bill would enable future trade negotiations to expand the definition of a "regulatory taking" and would give too much power to international corporations at the expense of the health and safety of California's citizens.

At the core of the League's concerns are the "expropriation" provisions that have become the standard of international trade agreements, such as that included in Chapter 11 of the North American Free Trade Agreement. The principle of expropriation is similar to that of regulatory takings, except it is more extreme. While the takings clause of the U.S. Constitution limits compensation to the physical appropriation (or its regulatory equivalent) of property, expropriation provisions require payment anytime health and safety regulations have a negative effect on a foreign corporation's investment. Even more troubling is that these provisions are often written with vague language that makes it difficult for local agencies to predict if and when their regulations may amount to an expropriation requiring compensation.

This issue is of particular importance to Californians. The largest claim for compensation to date involves California's ban on methyl tertiary-butyl ether (MTBE). The State ordered a phase out of MTBE after studies showed it was contaminating California's drinking water. However, as reasonable as this action seems, the Canadian corporation Methanex is now seeking compensation of \$970 million from the United States on grounds that the plan to remove MTBE from California's gasoline amounts to an expropriation. The alleged expropriation comes in the form of Methanex's lost sales of methanol, a component of MTBE.

Expropriation language in international trade agreements gives international corporations more rights than those given to domestic companies. Additionally, the process for resolving disputes is extremely troubling. Most international agreements rely on tribunals modeled after private commercial arbitrations, which are held behind closed doors, with no avenue for public or local government participation.

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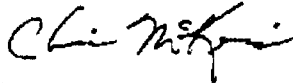
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The investor protection provisions in H.R. 3005 threaten to produce massive new financial claims against the U.S. federal treasury, which may then be passed on to the state or local level. If a multi-million dollar claim is awarded against the U.S. Government, it could pursue recovery against the state or local government whose laws were not in "harmony" with the NAFTA international arbitration tribunal's version of the law. If this occurs, H.R. 3005 will impose a serious new burden on the American taxpayer.

We urge that H.R. 3005 be amended to protect the legal authority of municipalities to enact local laws necessary to safeguard the health and welfare of our citizens. We support efforts to provide a strict and effective limit to the authority to negotiate expropriation provisions in international trade agreements and to provide open and transparent proceedings for the resolution of disputes, supporting a level playing field for U.S. and foreign firms, and incorporating well-defined U.S. Constitutional Fifth Amendment takings principles in all trade agreements.

Thank you for your consideration of our concerns. Please feel free to call me at (916) 658-8200 or Eve O'Toole, our Washington advocate, at (202) 833-0007 to discuss our concerns.

Sincerely,



Chris McKenzie
Executive Director

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